EXPLANATORY MEMORANDUM TO

The Gangmasters Licensing (Exclusions) Regulations (Northern Ireland) 2010

SR 2010 No. 162

1. Introduction

1.1. This Explanatory Memorandum has been prepared by the Department of Agriculture and Rural Development to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.

1.2. The Statutory Rule is made under section 6(2) of the Gangmasters (Licensing) Act 2004 ("the 2004 Act") as modified by paragraphs 8, 19(1) and 19(2) of Schedule 2 and is subject to the negative resolution procedure.

2. Purpose

2.1. The Regulations specify the circumstances in which a person acting as a gangmaster, as defined by the 2004 Act, is not required to obtain a gangmaster's licence. The Regulations replace the Gangmasters Licensing (Exclusions) Regulations (Northern Ireland) 2006 ("the 2006 Regulations").

3. Background

3.1. The Gangmasters (Licensing) Act 2004 applies to agricultural work, including horticulture and forestry, the gathering of shellfish and the processing and packaging of any produce or products derived from agricultural work, shellfish and fish. It was drafted in broad terms to ensure that all labour providers (gangmasters) operating in the specified sectors can be required to obtain a licence. As a result, certain circumstances which do not involve labour providers or where the risk of exploitation is minimal, are brought within the definition of gangmaster activity.

3.2. The Exclusion Regulations fine-tune the scope of the licensing arrangements by specifying circumstances where a person does not need to obtain a gangmaster's licence. Although the licensing scheme operates on a UK-wide basis, as agriculture and employment are devolved matters, Northern Ireland is required to make separate but similar Regulations to those applying in Great Britain.

3.3. At the time of making the 2006 Regulations, Ministers gave a commitment to review their operation to assess their effectiveness, to ensure that disproportionate burdens are not being imposed on business and to consider if the scope of the exclusions needed to be amended in light of experience.

4. Consultation

4.1. A UK-wide consultation took place in 2008 and the Exclusion Regulations have been revised in accordance with the most widely supported responses to it. In addition, a number of technical amendments have been made to

bring additional clarity to the Regulations. The Schedule has been divided into four parts dealing with "Produce workers", "Agricultural workers", "Shellfish gatherers" and "Bodies corporate". Each part contains definitions of the terms used in that part.

4.2. Paragraphs 1.1 and 2.1 define the terms used in Parts 1 and 2. Paragraph 1.2 provides that a licence is not required to supply a worker to process and pack produce to which the 2004 Act applies if in a catering establishment, wholesale market, retail or wholesale establishment. Paragraph 1.3 provides that a licence is not required to supply a worker to pack a product which contains an element derived from agricultural produce, where the end product is not a food product or an agricultural, fish or shellfish product eg paint brushes or cosmetics. Paragraphs 2.2 and 2.3 provide that a licence is not required to supply or use a worker for agricultural work if the loan is to another farmer for a short period or if the farm is the subject of a share farming agreement. The short-term supply of labour where one farmer provides services to another is also permitted under these paragraphs.

4.3. Paragraph 2.4 provides that a licence is not required if a worker is supplied to operate machinery supplied by an agricultural contractor. Paragraph 2.5 allows a worker to be moved between sole operators in the Seasonal Agricultural Workers Scheme (SAWS) administered by the United Kingdom Borders Agency and other SAWS operators. Paragraph 2.6 allows a service provider to use a worker to operate machinery owned or hired by the service provider. The service provider would otherwise be acting as a gangmaster under section 4(5) of the 2004 Act. Paragraph 2.7 allows a third party to enter into arrangements with a service provider whereby the service provider uses a worker to operate macahinery owned or leased by the service provider. The third party would otherwise be operating as a gangmaster under section 4(6) of the 2004 Act. Paragraph 2.8 allows a worker employed by a service provider to be used in limited circumstances in connection with a food and drink processing and packaging service.

4.4. Paragraph 2.9 applies if someone uses a worker to harvest crops on land which he has disposed of whilst retaining title to the crops grown on it. Paragraph 2.10 provides that a licence is not required to supply a licensed slaughterman to slaughter animals. Paragraph 2.11 allows an agricultural student to be supplied to a labour user by an educational establishment to further his education or training. Paragraph 2.12 allows the supply of up to four skilled agricultural workers. Paragraph 2.13 allows a service provider to use a close family member to assist in the provision of that service. The service provider would otherwise be a gangmaster under section 4(5) of the 2004 Act.

4.5. Part 3 of the Schedule permits the use, without obtaining a licence, of directly employed workers to gather shellfish from a fishing vessel and workers employed to gather shellfish by diving. Part 4 similarly permits the supply of labour between corporate bodies under the same ownership.

4.6. Three responses to the consultation were received from Northern Ireland, only one of which, from the Ulster Farmers' Union, made substantive

comments. These comments have been largely met (Parts 2.2 and 2.3 of the Schedule).

5. Equality Impact

5.1. The Department has screened out this legislation under the Equality and Human Rights screening procedures.

6. Regulatory Impact

6.1. A Regulatory Impact Assessment, which contains a summary of the responses received to the consultation, has been produced on a UK-wide basis. A full summary of the consultation responses is available on the Defra website at http://www.defra.gov.uk/corporate/consult/gangmasters-regs/summary-responses.pdf.

7. Financial Implications

7.1. There are favourable implications for those NI businesses which will not, or no longer, have to obtain a licence. For those which will still require a licence, the impact is neutral.

8. Section 24 of the Northern Ireland Act 1998

8.1. The Regulations are compliant with section 24 of the Northern Ireland Act 1998.

9. EU Implications

9.1. Not applicable.

10. Parity or Replicatory Measure

10.1. The Regulations are required to maintain parity with those in Great Britain to ensure that the same rules apply across the United Kingdom so that businesses here are not disadvantaged. There is no equivalent in the Republic of Ireland.

11. Additional Information

11.1. Not applicable.